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FORUM JURIDICUM

BACKGROUND, AIMS, AND OBJECTIVES OF THE INSTITUTE OF CIVIL LAW STUDIES LSU LAW SCHOOL*

*Paul M. Hebert***

The idea of establishing a special organization within the Law School to further the study of the civil law grew out of discussions which I had, as Dean of the Law School, with Mr. Tucker beginning in the early part of 1965. This group knows of Mr. Tucker's dedication to the ideal of bringing about a better understanding of civil law sources, civil law doctrine, and their meaning for the modern world. It is unnecessary to dwell upon details of the many activities of a scholarly nature Mr. Tucker has initiated and furthered in the field of the civil law. He and I are in agreement that Louisiana has an unrealized opportunity to achieve eminence in the civil law and that the time is ripe to exploit that opportunity. We are indebted to Dr. John Hunter, who first suggested that the authority he has from the Board of Supervisors to create Institutes in selected areas might be used to advance the general objective of emphasizing the study of civil law at the Law School. Mr. Frank Purvis, then President of the Law School's Alumni Association, participated in the early discussions.

With the approval of the faculty and under standards developed in faculty discussions, the principal one being the desirability of maintaining a high degree of faculty participation and control, the President in August 1965 gave his approval to a recommended plan of organization. The purpose of this meeting is to talk about the problems inherent in bringing about a revival of interest in civil law, to form a preliminary organization, to chart the relationship of this Institute to other organizations dedicated to similar general objectives, to take a hard look at the tasks to be accomplished, to consider what will be required to achieve the purposes in mind, and to determine what action

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is feasible within the framework of resources presently available, and how the necessary resources can be obtained to get on with the major tasks still awaiting us.

Copies of the presidential charter have been forwarded to everyone present so I will not now repeat what you have already had an opportunity to consider individually. But to reach a common basis for translating general purposes into particular programs, it will be helpful for us to quote the objectives stated in article 2:

"The Institute shall undertake to promote and encourage the scientific study of the civil law in the modern world, its history, structure, principles and actualities with a view toward facilitating a better understanding of the civil law of Louisiana and other civil law jurisdictions and making it a better instrument of good order. It may also seek to promote the improvement of law through the study of the techniques and the logical interpretation of law through doctrine and jurisprudence. The objectives of the Institute may be further elaborated from time to time by the President of Louisiana State University on suggestion of the Management Committee. These objectives will be furthered by means of theoretical and practical efforts of all kinds including publications, research and instruction. Seminars and course programs of the Institute may, with faculty approbation, be accepted for credit toward the degree of Master of Civil Law and Doctor of Civil Law as they may be offered by Louisiana State University Law School."

It can thus be seen that this Institute has broad authority to work in the area of civil law research and has permissive authority to encourage and stimulate the development of programs of graduate study in civil law. Obviously, neither objective can be realized without considerable financial support and, of the two authorizations, graduate instruction especially would require a definite means of subsidizing graduate fellows, who can be obtained only through the process of promotion and recruitment that is characteristic of graduate programs in the stronger law schools. In addition, it goes without saying that faculty personnel would have to be augmented to make a substantial start toward either of the goals so generally expressed.

At this point, it may be in order to ask a question: "What in the present situation calls for such an organization, and is the assessment of the need a sound one at this time?" I submit that any realistic appraisal of the civil law on the current scene in Louisiana requires an affirmative answer. Although the law schools of Louisiana, including the LSU Law School, have made great progress in the past twenty-five years, the pressure of the day-to-day work of instruction has meant that research and doctrinal writing have failed to keep pace with the tendencies that draw Louisiana, more and more, into the orbit of common law methods and thinking. About thirty years ago Professor Ireland advanced his thesis that Louisiana was in reality no longer a civil law jurisdiction as that term is understood in the part of the world where the civil law prevails. Professor Ireland described Louisiana as essentially a common law jurisdiction, despite repeated claims to the heritage of the civil law. Boyd Professor Henry George McMahon, who had then only recently come to the LSU law faculty, was the chief author of a reply to Professor Ireland under the title "A Reappraisal Appraised — A Brief for the Civil Law of Louisiana." He generously invited colleagues then teaching civil law subjects at LSU to join him in refuting the Ireland thesis. With the thoroughness characteristic of everything he undertakes, Mr. McMahon presented an impressive brief in support of the Louisiana system of private substantive civil law. This refutation of something we hoped would go away implied a hope that somehow Louisiana would keep close to its moorings and would develop essential doctrinal writings in the Louisiana civil law. I wonder if as effective a refutation would be possible today.

In the past twenty-five years progress has been made in law school courses pertaining to civil law, but aside from articles appearing in the law reviews, Louisiana has not developed any coordinated doctrinal writing covering the entire body of our Civil Code. The reorganization of legal education begun by Rufus Harris at Tulane in the 1930's produced excellent treatments of areas of the civil law. These were augmented by publications in the Louisiana Law Review, but the task of producing a comprehensive commentary on the Louisiana civil law remains to be done. It is a task that will require dedication and a multiplication of manpower in a coordinated plan requiring years for its execution. When I speak of a commentary on the Louisiana civil law, I do not mean merely a discussion limited to the Lou-

isiana jurisprudence. A Louisiana commentary should include: (1) a historical discussion of the legal institution being treated, with an appraisal of the need it fulfilled in the social and economic framework both in the Roman civil law and in the early French and Spanish codifications from which Louisiana institutions of the private law were derived; (2) a thorough analysis of how the particular legal institution has been reflected in the Louisiana codes and how it has been treated in the Louisiana jurisprudence, together with a critical appraisal of the validity and desirability of the interpretations and adaptations which the courts have supplied; (3) consideration of the writings of leading civil law commentators with indication of the relevance of their views to the problems of the Louisiana civil law; (4) a comparative analysis of the same legal institution in the modern civil law of selected jurisdictions and in significant late codifications; (5) study of the need for legislation, if any, directed to the particular legal institution and recommendations of changes which should be considered in modernizing the Louisiana private law in the area. Such a commentary could conceivably be undertaken on an article by article basis or on a subject-matter basis under a general plan to produce treatises on all important areas of the civil law. An example of the subject-matter approach is the work of Professor Yiannopoulos who, since his appointment to a research chair in the LSU Law School, has been enabled to devote a major portion of his time to the study of the civil law of property. The first volume in his treatise is to appear in 1966. We need to multiply such scholarly production on many fronts.

A caveat should be inserted at this juncture. Too often talk of intensified activities in the civil law is misinterpreted as a sterile effort to return to the doctrines of an earlier day with little regard for the actualities of modern life. Law must be responsive to the society it serves, and a willingness to sacrifice the past in the interest of law improvement for the present and the future should permeate any sound program of civil law studies. There must be no blind, emotional adherence to principles and doctrines that are outmoded and not suited to the problems of today. On the other hand, perspective in approaching any area of Louisiana private substantive law should be greatly aided by consideration of relevant developments in the civil law in many parts of the world. I maintain that studies so conceived are not impractical but, on the contrary, are highly significant

for the practitioner and the jurist. Certainly it is too narrow a view to confine the study of any important litigated matter in the civil law to the mere text of the Louisiana Civil Code and the Louisiana judicial expressions concerning it.

If these views are sound, as I believe they are, the magnitude of the task of legal scholarship in Louisiana is staggering. How can such aims and objectives be realized? More immediately, how can our work be started, because start it we must. Some encouragement can be drawn from the truism that where there is determination, ways and means will be provided. An example is the Louisiana State Law Institute. Begun as a mere idea, it has grown in usefulness and, in the main, means to achieve its objectives have been found. With similar determination the objectives of the Institute of Civil Law Studies can be achieved despite problems of personnel and resources which loom in the pathway.

We need to employ the resources and means at the Law School's disposal in the most effective manner to make a start. Our resources are not inconsiderable. In the first place, the Institute will have at its disposal library resources sufficient to make the undertaking of almost any research project possible. The Law School's library holdings are to be augmented by the "Tucker Civil Law Collection," which can be a continuing stimulus to the serious scholar of civil law. The talented services of the Law Librarian, Miss Wallach, are available for guidance in obtaining the additional civil law materials needed. The Law School has an able and experienced faculty, but means must be found to free a substantial part of their time for research and writing and this, in turn, means additions to the faculty to share the duties of instruction.

If one were projecting a budget for such an Institute, \$100,000 a year as a beginning would not be excessive for research faculty, research assistants, graduate fellows, visiting scholars in residence, special lectures, and for seminars in civil law. Even without such a fund, it should be possible to make a serious start in some areas. For example, the Institute could be the means of arranging allocations of faculty time for particular research projects in keeping with faculty interests. The Law School has done this upon occasion as indirect support for projects of the Louisiana State Law Institute and this pattern could, to some degree, be adapted to the tasks of this Institute.

Limited funds available for foreign visiting scholars might be used to obtain counsel and advice from leading civilian scholars who are interested in any project of this nature. Even the planning, execution, and publication of occasional civil law lectures would give impetus to the Institute. It is apparent, however, that the matter of providing financial support will be one of the problems this group should consider.

The question may be asked: "What is the relationship of this Institute to the Louisiana State Law Institute and the Louisiana State Bar Association?" In a general sense we are bound together by common interests, but the separate spheres of activity are identifiable. The Law Institute's Civil Law Section is directly concerned with the study of Louisiana Civil Law, with lending aid to further publication, with seeing Louisiana doctrinal materials developed, and with proposals for revision of the Code. The State Law Institute, however, recognizes that legal research in the civil law will inevitably be the task of the law schools, for only through the work of academic personnel can this objective be attained. On the other hand, the Law Institute can be of material assistance through its publication arrangements made with West Publishing Company. Also, when research is completed the Law Institute is the logical body to give consideration to proposed measures of law reform and to make recommendations for action to the legislature. It is probably accurate to say that proposals affecting the Civil Code would have little chance of legislative acceptance until they have been considered by the Law Institute. Especially is this true of the long-standing and yet unfulfilled legislative mandate to the Law Institute to revise the Civil Code of Louisiana. The LSU Law School can work through this new Institute to complement the functions of the Louisiana State Law Institute in the field of civil law.

The Section on Civil Law of the Louisiana State Bar Association, now in the process of organization, has objectives defined by the House of Delegates as follows:

"(12) Section on Civil Law — the purpose of this Section shall be to examine and study the Civil Law of Louisiana and the Louisiana jurisprudence and statutes of the state, with a view of discovering defects and inequities; recommending needed reforms; preserving and perpetuating the historic sources of basic Civil Law and supplying informa-

tion indispensable to an accurate understanding and evaluation of the philosophy reflected in the Civil Code; to foster and furnish a forum for the better understanding of the Civil Law of Louisiana and, generally, to work in cooperation with the Civil Law Section of the Louisiana State Law Institute in the accomplishment of these purposes."

The Civil Law Section of the Bar Association, at its recent organization meeting in Alexandria gave recognition to the fact that its activities are not designed to supplant or duplicate the work of the Law Institute. It will largely be an agency to sponsor particular programs for the bar at various meetings at which papers can be delivered. Through its programs it would seek to broaden the interest of practitioners and judges in the civil law. Further, the Bar Association's Civil Law Section can become an action group to further any legislative reforms touching the Civil Code, after the proposals have received the consideration of the Law Institute. In other words, the Civil Law Section of the Bar Association can become the agency to carry the results of research and study to the members of the bar.

This group is aware of the work the Law Institute has done in making translations of certain basic civil law materials available to the profession in Louisiana. In addition to the translations of Planiol, Geny, and Aubry and Rau on Obligations, which have already appeared, translations of Aubry and Rau's commentaries on Donations and Property are well under way. Publication of translations will, however, not be adequate to forge the link between Louisiana civil law and modern civil law. We must develop comprehensive treatises and commentaries. We must also train more of our graduates to a scholarly interest in the civil law and an awareness of the breadth of legal materials that can be brought to bear upon issues of code interpretation.

It is the Law School's hope that a Civil Law Institute of the type we are now organizing can achieve the objectives envisioned and that its work can become the means of strengthening all aspects of the Law School's work in civil law.

Now as to specific matters of organization, I recommend the following:

(1) Professor Yiannopoulos, as the holder of the Law School's research chair in civil law, is the logical person to be

designated the General Secretary of the Institute. I so recommend.

(2) Associate Professor Carlos Lazarus is an excellent choice for Assistant General Secretary and I place that recommendation before the group.

(3) A list of members of a proposed Advisory Board was sent to you. I recommend the election of that list, together with any additional names you may suggest at this meeting. In addition, I suggest that I be authorized to notify the members of the Advisory Committee of their selection and that a meeting of the Committee, which will of necessity have to be limited to the members who are available in Louisiana, be called for early 1966.

(4) The Executive Committee of the Institute should be composed of the Chairman, the General Secretary, the Assistant General Secretary, and two members from the Management Committee to be selected by you. The Executive Committee should be empowered to transact business during intervals between meetings of the Management Committee.

(5) A Finance Committee should be established. If he will accept the responsibility, I suggest that Mr. Frank Purvis be named Chairman of this Committee and that he be authorized to select the members of his committee, which can be approved by the Management Committee voting by mail.

Program. a. Immediate Matters. As to program, I suggest that official approval be given to the undertaking of research in the law of Obligations as a first important field; that continued support be given to Mr. Yiannopoulos's work in Property; that a coordinated series of lectures in the civil law be planned for 1966-1967; and that the Executive Committee be authorized to support such additional activities as are feasible within the funds presently available to the Law School for work in civil law.

b. Longer Range. The Executive Committee should be authorized to plan for a basic general treatise or commentary covering the civil law with recommendations as to how personnel can be obtained and an estimation of the cost.